

POLITICAL IDEOLOGY OF THE WOMEN'S MOVEMENT'S ENGAGEMENT WITH LAW *

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I

The Framework

The editors of this volume set me a very difficult task. I have never been a student of law, though long association with Lotika Sarkar has stimulated a latent fascination for the layers of meaning one may sometimes find contained within legal concepts. As a student of history and politics, I have also been intrigued by the political dynamics of interpretation of some of these concepts. At times such interpretations have satisfied and strengthened my own inherited respect for the rule of law. Too often, however, some interpretations (or non-interpretations) dilute, mystify, even erode the intrinsic value of such concepts, leading to me question the very possibility of legal principles being able to counter social and human prejudices, pressures and biases.

This ambivalence typifies the views of many others in the women's movement. The Indian women's movement draws its strength from the range of diversity of ideology, class, sense of identity and understanding of the sources of women's oppression as well as priorities for struggles. This diversity also affects the attitude to law making. Some foreign analysts of the Indian women's movement divide it into a 'Rights Wing' i.e. those who target their demands on the state and seek legislative mandates for women's advance; and an 'Empowerment Wing' - consisting of groups who place more emphasis on empowering women from within themselves.¹

My interpretation, of necessity, reflects the views/beliefs/faith/rationale of those who have sought to use law as an instrument of social, economic and political change in gender relations and the dominant social construction of gender. They aimed to protect rights already conceded as well as to empower women, and at times, to counter some of the macroprocesses of change - economic, social, political or cultural - which constitute not only obstacles, but also threats to gender equality. In doing so, however, the movement's position has not been static, nor has it been influenced only by women-specific issues

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FOOTNOTES

1. Leslie Calman, 1992 - *Towards Empowerment : Women and Movement Politics in India*, Boulder; Westview.

or problems. It has been compelled to respond to changing political, social, economic and other national realities.²

Political pundits may look for ideological categories - consistent or otherwise - in the shifting positions taken by the movement at different points of time on the '**same**' issues. But to do so would be to ignore the political dynamics of the movement itself, as well as the changing historical context - from which the movement cannot be isolated.

In examining the movement's engagement with law - this kind of historical relativism may be viewed as heretical, particularly from a person generally identified with the 'Rights Wing' of the movement.³ This paper, I hope, will be able to demonstrate that on fundamental issues the movement has adopted absolutist, even fundamentalist positions, while agreeing to compromise, experiment or innovate in social, political, economic or cultural strategies, in order to seek legitimacy and support from other sections or lobbies.

In dealing with issues of identity politics, the movement has often been accused simultaneously of dogmatism and opportunism. Vis-a-vis the problems of rising violence and institutions like dowry the greatest critics of the movement's real failure - despite its victories on the legislative front - are within the movement itself. On the choice of political reservation for women in all elected bodies - the current debate⁴ is bringing up many more charges, but mainly from those who oppose the women's movement intuitively, as a threat to the existing socio-political establishment.

By concentrating on these three for my examples, I hope also to explain the movement's attitude to the Constitution, to socio-cultural pluralism, and to menacing problems that threaten future security - not only of women, but of human society, civilisation, and the nation as a whole.

The Women's Movement and the Politics of Identity

The major issue in identity politics - squarely addressed only during the present phase of the movement is the **definition** of the Indian Woman. Was India's racial, cultural and religious pluralism to remain an obstacle in

2 . Agnihotri, Indu and Vina Mazumdar, 1995 : 'Changing Terms of Political Discourse, Women's Movement in India 1970s-1990s', *Economic and Political Weekly*, Vol. XXX, No. 29, July 22.

3 . Calman, L.J., op.cit.

4. Raging since the 81st (Constitutional) Amendment Bill 1996 was introduced in Parliament. The Bill seeks to reserve 1/3 seats for women in the Lok Sabha and State Assemblies, on lines somewhat similar to the provision made in Panchayati Raj Institutions and Municipalities in 1993 - by the 73rd and 74th (Constitutional) Amendments. Interestingly enough, 1/3rd reservation for women in the latter bodies did not provoke even a fraction of the opposition that the 81st Amendment Bill has raised.

achieving gender equality? And could the women's movement - virtually dead since the mid-fifties - really sustain, let alone strengthen itself - without addressing the inequalities among Indian women?

The Committee on the Status of Women⁵ certainly did not think so. The authors of *Towards Equality*, self-confessed 'beneficiaries' of the equality clauses of the Constitution, but shattered by their discoveries of the illusion of equality - wrote the following as 'guidelines and criteria' at the end of their 'Approach' chapter, to provide a rationale, and a philosophical frame to what the Committee recommended on the basis of their discoveries. Though couched in the language of liberal democracy - loaded with values developed during the freedom struggle (not contemporary feminism) these few principles were destined to influence many in the coming years - in their own search for an identity for themselves, and in the evolution of a perspective for the movement's position on the politics of identity:

1. that equality of women is necessary, not merely on the grounds of social justice, but as a basic condition for social, economic and political development of the nation;
2. that in order to release women from their dependent and unequal status, improvement of their employment opportunities and earning power has to be given the highest priority;
3. that society owes a special responsibility to women because of their child-bearing function. Safe bearing and rearing of children is an obligation that has to be shared by the mother, the father and society;
4. that the contribution made by an active housewife to the running and management of a family should be admitted as economically and socially productive and contributing to national savings and development;
5. that marriage and motherhood should not become a disability in women's fulfilling their full and proper role in the task of national development. Therefore, it is important that society, including women themselves, must accept their responsibility in this field;
6. that disabilities and inequalities imposed on women have to be seen in the total context of a society, where large sections of the population - male and female, adults and children-suffer under the oppression of an exploitative system. **It is not possible to**

5. Appointed by the Government of India in 1971, the Committee submitted its Report *Towards Equality* on 1st January 1975. The author was Member-Secretary of the Committee, Ministry of Education and Social Welfare, 1975.

remove these inequalities for women only. Any policy or movement for the emancipation and development of women has to form a part of a total movement for removal of inequalities and oppressive social institutions, if the benefits and privileges won by such action are to be shared by the entire women population and not be monopolised by a small minority.

7. that if our society is to move in the direction of the goals set by the Constitution, then special temporary measures will be necessary, to transform *de jure* into *de facto* equality.⁶

Nearly two decades later, two feminist scholars, who did not subscribe to the philosophy of liberal democracy, recorded their views on the role and character of the CSWI's report - *Towards Equality*.

If the oppositional movements of the late sixties and early seventies and the resistance to the 1975-1977 Emergency mark one beginning of the current phase of the women's movement in India, the publication in 1974 of *Towards Equality: Report of the Committee on the Status of Women in India* is, one could argue another. Histories of the women's movement in the United States often cite Betty Friedan's *The Feminine Mystique* (New York: W.W. Norton, 1963) as the book that set the women's movement in that country going. **The contrast between these two "founding texts" is perhaps as good a measure as any of the contrast between the two movements and their constituencies.**⁷ (emphasis added).

The pre-independence women's movement, - influenced considerably by the anti-imperialist ideology of the freedom movement on the one hand, and liberal or socialist ideologies of some sections of the women's movement in the West - had emphasised the principle of gender equality - in social, economic and political rights. Accepted by the Indian National Congress in the Fundamental Rights Resolution of 1931, the Constitution put forward the basic principle of equality of all citizens before the law, irrespective of caste, creed or gender (Articles 14 & 16) - 'a radical departure from the values of the inherited social system'.⁸

Recognising the existence of institutionalised inequalities in the society - the Constitution provided certain mandatory instruments for affirmative action by

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6. Government of India, 1975, *Towards Equality: Report of the Committee on the Status of Women in India* (CSWI); New Delhi, Ministry of Education and Social Welfare: p. 8.
 7. Tharu, Susie & Lalita K. (eds.) 1994. *Women Writing in India*, Vol. II, New Delhi, OUP, p. 101.
 8. GOI, op.cit, p. 7.

the State - reservations in the case of the Scheduled Castes and Scheduled Tribes, India's historically oppressed communities (Article 15(4)), and empowerment of the state to adopt **special measures**, over-riding the fundamental right of equality - if necessary, in favour of women and children (Article 15(3)). Concrete ideas to achieve justice - social, economic and political - or equality of opportunities and status and other attributes of the quality of life were left mainly to the Directive Principles of State Policy.

The women's movement never viewed the Constitution as it stands as complete or perfect, but only as providing:

- (a) the basis for a new identity - as full citizens of the Indian Republic, and
- (b) a source of their rights to equality, dignity and justice in various spheres.

The Constitution's radical departure from inherited social values represented to women of that generation its greatest intrinsic quality. For the women of my generation, with definite memories of pre-independence society and of the freedom struggle, the acceptance of gender equality in the Constitution was the fulfillment of a dream - of women's entitlement to an independent identity. Especially for those of us who entered various professions in that period, the exhilaration of being accepted as equals by our colleagues and our families⁹ was a living reality. But then, we came from progressive middle class families, had been trained in higher education, and had little experience of what life was really like outside our protected and privileged existence; in families, communities or institutions which did not feel it necessary to adapt to the implications of the Constitutional guarantees, or remained unaware of them.

Apparently this feeling, that the movement had achieved its objective, was shared by many within the active women's organisations, resulting in a fading out of the movement's militancy after the mid-1950s.

Significantly, it was the shock of the national emergency (June 1975 - February 1977), with the suspension of fundamental rights of citizens that was to reawaken the women's movement from its two decade long slumber, and substantially determine its political ideology in the coming decades.¹⁰

9 . This reflects the personal experience of many of us. I returned from Oxford in 1950. My request to my father (a self-confessed conservative) for permission to take up a teaching job - brought the reply - 'The new Constitution tells me I cannot discriminate between you and your brothers. So go ahead'. A few years later, when 'role conflict' between maternal and professional responsibilities riddled me with doubts and guilt - he resolved them by suggesting that I introduce the missing 'third factor' into the 'equation'. 'This poor country made a lot of investment on your training. Do you have the right to waste it?' I realised that he was treating me as his equal - since the third factor had been his guiding principle throughout his own career.

10. Agnihotri and Mazumdar, op.cit.

New or renewed consciousness about the responsibilities that came with political rights drove the movement into questioning

- (i) 'the invisibility' of women's economic and social contributions and status; and
- (ii) the validity of wide-spread social beliefs that denied the real life experiences and aspirations of the majority of women.

While, uncovering the degree of diversity in 'culturally' prescribed gender roles in our plural society, the Committee on the Status of Women in India had managed to shatter the following myths, exerting a marked influence on the women's movement's crisis of identity and choice of roles.

'That Indian cultural traditions did not permit women to work for a living.' In reality, the majority of women had always been deeply involved in the major economic sectors, and were being **pushed out** by the process of economic transformation and **increasing exclusion** from basic productive resources and their livelihoods.

'Hindu society did not traditionally permit either divorce or remarriage of widows'. In reality, according to the Census of 1931, only 13-1/2% of the Hindu population followed this norm;

'Polygamy was mainly confined to Muslims, because of Islamic law'. In reality, as late as 1961, the practice was more rampant among Hindus, despite the law banning it in 1955.¹¹

'Dowry was a practice deep-rooted in traditional culture, and would disappear with the spread of education and employment among women'.

In reality, dowry was prevalent only among limited groups upto 1961. Bride-price was far more wide-spread (Census of India 1961). The educated (grooms and families of both brides and grooms) were the pace-setters responsible for commercialising marriage transactions, with dowry reflecting changing market values of grooms with different types of qualifications. Restrictive laws had proved totally ineffective to prevent the escalation and spread of this practice, even among the poor or communities which earlier practiced bride-price, or no dowry (e.g. Mathurs, Srotriya Brahmins in the North, Nairs and others in the South, Muslims and most Christian Groups).

'Uneducated women's backward consciousness kept them away from political participation'. In fact most uneducated women demonstrated (through the exercise of their vote) their increasing desire to participate. It was the political process and organisations (e.g. parties) that ignored issues that

11. Special study on Marriage Practices conducted by the 1961 Census.

women wanted on the political agenda, and stalled the emergence of real women leaders, representing concerns/issues of different groups of women.

The Committee summarised these and other findings in the rather cryptic phrase - 'regression from the norms developed during the Freedom Movement'.

The reaction to the first of these discoveries - backed by an explosion of further research - was to push different sections of the nascent movement to a sense of outrage. Census and other data proved that the 'pushing out' process, started long before independence, had **accelerated** since then - during the period of State-planned economic (and other) development. The CSWI had charged the Indian state - of **not fulfilling** its constitutional mandates of discrimination on the ground of sex; and pursuit pro-women policies to ensure that women received their due share of economic and other benefits emanating from 'development'.

This 'adverse impact' of modernisation/development on the majority of women in third world economies was the great discovery in the first half of the International Women's Decade. The Indian report had in fact preceded and to a great extent provided an alternative analytical framework to the dominant economic model of women's economic participation. From the second half of the seventies there was an avalanche of literature on the declining status of women in the economy throughout the Third World.¹²

Indian women played a key role in the global debates - in challenging analytical approaches to the study of economic transformation, to theories of economic growth, or stereotypes of the sexual division of labour, and also in the search for alternative strategies to achieve gender justice in the economy. Dominant theories of women's 'supplementary' or 'dispensable' economic roles and their **basic identity as dependents** were challenged successfully by Indian and other third world data, contributing substantially to new discoveries of the feminisation of poverty, the economic basis of increasing female migration and their increasing concentration in the unprotected, unregulated, but growing informal sectors of the economy.

These theoretical debates uncovered that definitions of women's work or its valuation did not result from the interaction of demand and supply of labour, but were determined by dominant patriarchal values and institutions that intervened to ensure gender based differentiation in labour allocation, valuation, and division at different levels - the family, the community, the state, professional academia, public opinion makers etc. The internationalisation of knowledge systems and the increasing globalisation of economies had accelerated emergence of homogeneous stereotypes of women's identity with restricted, standardised definitions of their economic roles and contributions to the family and the national economy.

12. As the residuaries of 'traditional', 'pre-modern' or 'pre-industrialised' societies. Our questioning of the validity of these terms were substantially supported by work on women's history in western, and socialist countries also.

In India - the struggle by scholars and activists was to change State policies and laws that **permitted, promoted** or **aggravated** both invisibility and devaluation of women's labour - treating them as violations of Constitutional guarantees, and removed from the realities of most women's economic identities. Ninety four percent of women who were in the informal sector received no protection from the labour laws modelled on ILO Conventions. To the newly resurgent women's movement this denial of worker status and rights as workers and independent citizens became a priority in struggles against the State.

A friend and close observer of the Indian Women's Movement from the United States describes the preoccupation with economic development issues as 'state-initiated actions emphasising economic welfare that placed women's issues on the public agenda', to distinguish them from 'women's groups initiated politicisation of body politics (rape, dowry deaths, wife-beating, sati, female foeticide etc.) She treats the agitation over the Mathura rape case as the watershed, marking a 'shift in the politics of agenda-building around women's issues begun in the late 1970s', which succeeded increasingly in focussing public attention on issues of violence against women.¹³

This analysis ignores the issue and debate on women's economic marginalisation within the chequered history of Indian politics of the 1970s and 1980s. The critiques of the government's economic growth policies - in agriculture, industry, and other sectors which caused economic marginalisation of the 'overwhelming majority of women' - leading to some reviews and attempts at change can hardly be described either as 'state-initiated', or as arguments for 'welfare'.

The CSWI had certainly been appointed by the Government of India, but neither its mode of investigation, nor the report had any influence on the government. Nor did it lead to any serious State action until the 1980s - when it took place under pressure, from a coalition of national women's organisations¹⁴ - the 'Rights Wing' referred to earlier.

The 'issues of economic welfare', in the context of millions of India's poor working women, represented issues of survival, equitable

13. Mary F. Katzenstein, 1991-92 : 'Getting Women's Issues into the Public Agenda: Body Politics in India', *Samya Shakti*, Vol. VI.

14. Formed in 1980 and generally referred to as the 'Seven Sisters' - this currently includes All India Democratic Women's Association (AIDWA), All India Women's Conference (AIWC), Centre for Women's Development Studies (CWDS), Joint Women's Programme (JWP), Mahila Dakshata Samiti, (JMS), National Federation of Women in India (NFIW), Young Women Christian Association of India (YWCA). For its first memorandum to the Government of India in 1980, see *Indian Women in the Eighties: Development Imperatives*, All India Women's Conference, 1980, New Delhi.

recognition/acknowledgment (as contributors to the family and the national economy), and entitlement; first to a just share of their own produce and of development resources, and second to a voice in the shaping and choice of policies that affected their lives. It was also the beginning, of a process of redefining what were women's issues in the Indian context.

This paper contends that the movement's preoccupation with the problems, perspectives and priorities of the majority of women - as distinct from the earlier phase of the movement was a deliberate choice - to assert a new identity for itself. It helped the movement to break out of the inherited class and cultural norms of gender roles, and the dominant perception of women's issues as mainly social - not political or economic - a distinctly patriarchal legacy.

The dreams of 'independence', with access to education, employment and political equality, nursed by the earlier movement had not been fulfilled. It was imperative to avoid the mistakes of the past by broadening the base of the movement, and to listen to the women who had so far remained invisible to all elites - women and men alike - in government, in academia, in the media, political parties, and all other sectors supposedly responsible for forming public and democratic opinion.

Secondly, this particular preoccupation also pushed many in the movement to organising educational and economic activities - which in India have acquired a generic nomenclature, as 'constructive activities' - since the days of Mahatma Gandhi. Such activities brought the movement close to a host of other issues - of environmental degradation, livelihood insecurity, deprivation and discrimination against girl children, disappearance of customary rights of access to basic productive resources and the non-penetration or deliberate failure of the legal process to provide justice to the majority of women. Struggles for peasant women's rights to land, water and forest produce, for minimum and equal wages in the informal sector, for legislative protection to home-based producers, for child care services for all women in low income groups as a basic right, and for ear-marking resources and mandatory quotas for women within the anti-poverty programmes have to be viewed as the movement's espousal of poor, working women as its main constituency. They also represented the movement's assertion of democratic citizenship - women's right and responsibility to correct and redirect the State's policies for national development, to insist on the fulfillment of the Directive Principles of State Policy.

The movement's insistence on the government's responsibilities rests on its fundamental position - that India is a welfare state. Except for certain groups on the fringe (mainly the creation of the last few years of the new economic policies, seeking to jump on to the 'band-wagon' of women's rights) the Indian women's movement has never subscribed to the theology of the free market; or globalisation as the remedy of India's 'underdevelopment', unemployment, inequality and poverty. Instead, it has persistently opposed all moves to dilute the democratic socialist and secular ideologies in India's political traditions.

Its opposition to centralised authoritarianism during and after the Emergency was manifested in its refusal to view the late Indira Gandhi as a symbol of women's power, its support for decentralisation of governance sought to be achieved by the 73rd and 74th Constitutional Amendments¹⁵ and its outright rejection of the proposal to increase women's presence in Parliament and State Legislature by nomination in the National Perspective Plan for Women (NPP) drafted by the government of the late Rajiv Gandhi.¹⁶

Its absolutist position on secularism has brought it into confrontation with the right wing of both the Hindu majority and Muslim and other minorities. The movement recognises the deep sense of religiosity of most Indian women, and the identity conflict experienced by many, especially in minority communities. In the earlier years, pursuit of the Uniform Civil Code had appeared feasible, but the political confrontation resulting from the growth of communalism, and the espousal of the Uniform Civil Code by the Hindu right resulted in a degree of confusion and differences of opinion within the movement. The initial mistake - in campaigning for the Hindu Code Bill in the 1950s, leaving the other personal laws¹⁷ intact - to be amended only when 'the community' asked for it, has crippled and haunted the movement even in its current phase.

The tragedy of the UCC debate is that the political class in India has projected it always as an instrument for 'national integration' and never as a method to achieve social justice for women and other oppressed groups.¹⁸ The challenges thrown out by the Supreme Court¹⁹ aggravated a discourse already vitiated by the increasing communal tension and fundamentalist postures of various right wing forces in different communities. The women's movement was not strong enough to change the terms of the discourse - for both internal and external factors. Its failure to stop the passage of the Muslim Women's (Protection of Rights on Divorce) Act of 1986 demonstrated this weakness.

Muslim women seeking protection against domestic oppression told their legal adviser²⁰ during the aftermath of the Babri Masjid demolition that 'this is not the time to demand our personal salvation - when the entire community feels

15. See footnote No. 4.

16. See the Section III.

17. Muslim, Christian, Parsi and Jewish.

18. Eqbal Ansari, 1996 : 'Muslim Women's Rights, Goals and Strategy of Reform', Paper presented at the National Workshop on Gender Just Laws, Bombay, May 31-2 June.

19. In its judgement on the Shah Bano Case (1985)

20. Flavia Agnes - Personal Communication.

threatened by the upsurge of violence'. This is a living reality that the movement has to face frequently.

The mainstream of the movement recognises that India's strength lies in its cultural heritage of religio-ethnic diversity, and it has been firm and active in opposing all communal conflicts. But it has yet to resolve two basic, critical issues. How does it achieve human rights for women while protecting the rights of minorities in general? Where the particular minority groups are also historically exploited (especially in terms of their communally owned land and forests) and feel threatened by cultural and ethnic extinction (as in the case of some Scheduled Tribes) - they tend to adopt regressionary attitudes with regard to their women's basic freedoms and customary rights for survival. How should the movement respond to such women's appeals for solidarity in their struggles to improve their own status?²¹

The movement's efforts to reach out to these groups, rewarding as they have been remain halting and intermittent. Crisis situations have brought forth protests and condemnations - of 'using violence against women as an instrument of political action'²² - but constructive strategies for partnership and a long term vision in terms of legislative protection and advance are yet to evolve.

Secularism per se, though it provides a basic premise, cannot ensure human and social development for all India's communities, just as liberal, representative democracy does not provide de facto equality of opportunities or justice for all. Nor does the pursuit of human rights in the form designed and being loudly advocated by the North prevent fragmentation and alienation of individuals from their social environment.

Especially in the context of globalisation in its current form - with a weakened nation-State system and the increasingly unrestrained and unaccountable power of transnational entities representing international capital - the Non-aligned Movement, the United Nations, and the international women's movement - are themselves crippled and divided by the same forces.

The choice of identity made by the Indian women's movement has stiffened and united its opposition to Structural Adjustment Policies (SAP) on the economic front, or population control policies, including some threatened legislations that would erode fundamental rights of women, men and children,²³ or

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21. Such appeals have come from several of the predominantly tribal states in the North-east, and from tribal women in the Chotanagpur region.
 22. YWCA of India, 1993 : *Women Against Communalism*, Report of Joint Women's Delegation to Ahmedabad, Surat and Bhopal, New Delhi.
 23. (a) Proposed 79th Constitutional (Amendment) Bill 1992; (b) Recommendations of the Swaminathan Expert Committee on a Draft National Population Policy; (c)

attempts to impose a UCC without steps to eliminate real inequalities and inequities within existing laws. Resolution of the challenges facing it internally will, however remain - as major responsibilities to be confronted in the 21st century.

Government of India Draft Statement on National Population Policy 1996.
Except for (b) the other two documents are still not available to the public.

II

VIOLENCE AGAINST WOMEN AND THE POLITICS OF IDEOLOGY

It is widely accepted that the issue of violence against women has been the greatest rallying point of the feminist movement in the second half of the 20th century, often referred to as the second phase of feminism. The Report of the Committee on the Status of Women in India, however hardly emphasised this issue⁹ except for drawing attention to the declining sex ratio and the higher rates of female infant mortality as a composite index of the neglect, marginalisation and devaluation of women as continuing processes even after independence and the emergence of the Indian republic.¹⁰

In 1991 while collaborating with Hanna Papanek on a paper on the women's movement in India,¹¹ I suggested this issue as a classic example of maximum mobilisation and maximum failure. It was also an issue which defied efforts by some friends abroad who were seeking to analyse diversities within the Indian movement with standardised feminist concepts developed in the West, by the difference in attitudes to law and the state.¹² A comparison between the dowry and the rape agitations from the late 1970s onwards showed extraordinary unanimity on the rape issue among all sections of the women's movement - both in the politics of protests and in the decision to appeal for legal measures. On the dowry issue, in contrast, there was serious division of opinion which increased over the years instead of diminishing, even as the number of dowry deaths mounted.

Just four years later I had to disagree with the editor of a volume on women's movements - to the extent of withdrawing the paper that I had written jointly with Indu Agnihotri¹³ rather than agree to the editor's decision to mystify the entire

FOOT NOTES

⁹ The CSWI, identifying itself as a 'fact finding' body, had imposed a self-denying ordinance - we were not going to read the new feminist literature coming from the West since mid-1960s. No one should be able to say that we were bored by such influences.

¹⁰ After her baptism by fire into activism through the protest to the Chief Justice on the Supreme Court's judgment on the Mathura rape case, Lotika Sarkar blamed herself for the CSWI's failure to examine rape cases adequately. See *Samya Shakti*, 1985 - Discussion Forum; Also L. Sarkar in *Indian Journal of Gender Studies*.

¹¹ Papanek Hanna and Vina Mazumdar, 1991 : 'Towards Equality : The Dialectics of the new Women's Movement in India'. Paper presented at the 20th Annual Conference on South Asia, University of Wisconsin, 1-3, November.

¹² Leslie Calman, 1992 : *Towards Empowerment : Women and Movement Politics in India*. Boulder, Westview; and Mary F. Katzenstein, 1991-92: 'Getting Women's Issues out the Public Agenda : Body Politics in India', *Samya Shakti*, Vol. VI. I have questioned these two assessments elsewhere.

thrust of the Indian movement's critiques of the dominant development paradigms within the unequal world and national social order as opposition to the 'quiet violence of poverty'.

I may have lost the sense of certainty which I shared with the earlier generations of the Indian women's movement and my colleagues on the Committee on the Status of Women in India - in viewing legislation as the major instrument for ushering in changes in social order, and 'building a gender just society which perceived as a part of the task of nation building, of development, and social reconstruction',¹⁴ and being forced to share some of the disillusion or disenchantment with the efficacy of law and the State to provide gender justice. But I would still argue that a historical failure at a particular point of time should not be generalised to a point of universalisation as an impossibility.

We mobilised to combat two social phenomena : (i) a rising trend of violence against women within and outside the family; and (ii) an extraordinary lack of sensitivity (e.g. in cases of crimes within the family) among the law making and enforcement agencies, and general public opinion, especially within the upper and middle classes - both urban and rural. On the issue of domestic violence we were accused by many of 'wanting to break up the family'. Even some older women's groups were critical and thought we were carrying the debates and agitations too far.¹⁵

The Role of the Mathura Rape Case in Shaping the Movement's Ideology

In these days of loss of collective institutional memory, some of us have had to assume the role of chroniclers - to keep 'the politics of memory' alive¹⁶. Most students and activists in the women's movement are aware of the protests against the Supreme Court's judgment on the Mathura rape case, as the start of the second wave of the women's movement. But not all are aware of the critical role played by four law teachers in sparking off this protest. It was the Open Letter to the Chief Justice authored by Lotika Sarkar, Upendra Baxi, Raghunath Kelkar¹⁷

¹³ Vina Mazumdar and Indu Agnihotri, 1995: 'Changing Terms of Political Discourse : Women's Movement in India, 1970s-1990s', *Economic and Political Weekly*, Vol. XXX, No. 29, July 22,.

¹⁴ Swapna Mukhopadhyay (ed.), 1998 : 'Introduction' in *In the Name of Justice : Women and Law in Society*, Delhi, Manohar Publishers, p. 9.

¹⁵ On the interaction between the movement and the judiciary executive and legislative wings of the State, see Government of India, 1985 *Women in India - Country Paper* : New Delhi, Ministry of Social and Women's Welfare. See also CWDS paper on Gender Justice and the Indian State - in the Administrator, Journal of the Lal Bahadur Shastri Academy, Mussoori. Both contained substantial inputs from Sarkar.

¹⁶ In my case, I assumed this role in response to Prof. Upendra Baxi's warning against the 'politics of memory' defeating the movement.

¹⁷ The fact that all these three were teachers in the Delhi University's Faculty of Law may be known to some. But what is not known to many is the fact that all were members of the CSWI's Task Force, and had undoubtedly to share some of its growing sense of outrage at women's distress.

and Vasudha Dhagamwar that brought information as well as a critique that the Supreme Court had failed to uphold its constitutional role as guardians of its fundamental principles¹⁸ that enabled women's groups and other civil rights/democratic groups to begin the agitation. It was never centrally planned by any organisation - but spread spontaneously from one place to another, first Ahmedabad, then Nagpur, then Bombay and then Delhi. These four cities picked up the agitation over a period of nearly one year. In the process of the agitation new organisations were formed and new activists emerged. The fact that Delhi was the last to organise a joint march by twelve organisations, (not all women's organisations, but including students and trade union groups, and many other passers-by) in the summer of 1980 led to the national press - which was very supportive of the campaigns - being totally dominated by the rape issue. "For many of the protesters this was their first involvement in agitational politics on women's issues. The Bombay march included the students and teachers of an elite women's institution, Sophia's college, led by their Principal, Sister Mary Braganza, a dedicated senior nun whom no one could have associated with 'agitational politics'".¹⁹

In consequence the United Nations mid-decade Conference at Copenhagen in July 1980 went virtually unreported in the Indian press, in spite of the fact that the Government of India's delegates to the Preparatory Committee and UN Commission on the Status of Women had played a major role in projecting Third World perspectives into the Programme of Action, incorporating many of the new strategies which were being developed by joint working groups of officials and women's studies scholars between the years 1977-80.

After the Delhi march there were questions by opposition members of Parliament who joined the press in criticising the government for its inaction in changing the existing rape law. There were more press reports about incidents of rape and gang rape of poor women in many places. The government of Indira Gandhi, (who had returned to power in January 1980) was forced to take note of this spreading agitation after the Delhi march, and request the Law Commission to urgently undertake a study. Along with various women's organisations and activists, the Law Commission also summoned the law teachers for their advice.²⁰

The 84th Report of the Law Commission made a departure from its earlier practice by listing the names of the women's organisations and activists whom it had consulted. The Commission's recommendations started up an even wider public debate on rape and the role of public officials.²¹

¹⁸ The letter was dated September 16, 1979 and was published later in the *Supreme Court Journal*, 4 SSCC. See also Baxi Upendra, Reghunath Kelkar and Lotika Sarkar - 'Notes on the Reform of Rape Allied Offence', 1st May 1980, reproduced again in the *Supreme Court Journal*.

¹⁹ Hanna Papanek and Vina Mazumdar op.cit

²⁰ It was provided a 23 page memorandum.

²¹ For a detailed examination of the Report, see Lotika Sarkar, 1988, *National Specialised Agencies and Women's Equality - Case Study on Law Commission*, CWDS, New Delhi.

The government did not accept all the recommendations of the Commission nor all the principles (e.g. marital and power rape) demanded by women's groups and the legal experts. But the Criminal Law Amendment of 1981 did prescribe a differential treatment for cases of custodial rape : (a) by transferring the onus of proof of innocence to the accused rather than the victim; and (b) through a mandatory higher minimum punishment (7 years imprisonment). These indicated a sign of acceptance of the movement's Constitutional ideology:- that the Indian republics' claim to recognition as a welfare state required higher accountability of public servants; second, that the principle of equality before law became meaningless unless courts took into consideration the socio-political inequalities that often affected the victims in such cases. Another significant departure in this amendment was a shift to viewing rape as a violation of woman's human rights and not an attack on her chastity, modesty or respectability. Courts were directed not to admit evidence regarding the woman's previous sexual history or character unless compelled by norms of a fair trial.

The judiciary or legal professionals have not always followed this direction. Neither has it significantly affected the incidence of rape, because enforcement continues to be poor. For the women's movement however, the unanimity achieved on this issue was an ideological break-through. The pursuit of equality hereafter could not ignore the context of unequal power relations²² - not merely within the domestic or economic realms but include the gray regions of socio-political relations complicated by the institutions of class, caste, religion, ethnicity and the often undependable character of State power.

Memories of the Emergency were still very strong. At a meeting of young feminist activists held in the Centre for Women's Development Studies later in the year, Lotika Sarkar was asked by many of the former why she and her colleagues had not demanded transferring the onus of proof to the accused in all cases of rape instead of restricting it to custodial rape by public officials only. Her answer was 'Do you want to hand over such power to the government, just after we have come out of the Emergency? Don't you realise that such power could be used to stifle all political dissent?'²³

This radical thrust has continued to characterise a substantial section of both activists and analysts in the women's movement in critiquing government policies and action that benefitted only the well-to-do, while marginalising and impoverishing the majority of the poor; in opposing legislation or policies that threatened the legal or Constitutional rights either of the poor section, minority women's rights, e.g. the Muslim Women's [Protection of Rights on Divorce] Act, 1986; the Defamation Bill, 1988, which would have severely crippled freedom of the press; and certain proposed Constitutional Amendments as a part of Population or Social Policy.²⁴

²² Though the movement has not succeeded in their demand for inclusion of marital rape, the principle of power rape was incorporated within the Civil Rights Amendment Act, popularly known as Harijan and Atrocities Act.

²³ Lotika Sarkar, Personal Communication.

²⁴ See discussion on p 31-32.

Women activists and organisations have become involved in far larger numbers in various activities to assist poorer women - to become literate, to improve their economic position, to obtain access to legal or other essential services, and above all, to organise for empowerment. Since 1980 it has been impossible for the women's movement to ignore cases of violence against poor women in rural or urban areas even to the point of condemning women from the upper classes who were party to such acts. Similar ideological unity has been growing in opposing communalism and fundamentalist violence or the use of violence against women as an instrument of political action.²⁵

Dowry And Dowry Violence

In the case of dowry however, the agitation took a longer time to develop. Initially it was against the institution of dowry itself and its impact on the position of daughters within the family. However, with the discovery of dowry related violence, the thrust of the agitations changed into a demand for retributive justice rather than preventive measures to eradicate the practice itself - the approach recommended by the Joint Select Committee of Parliament in 1981.²⁶

To quote one of the Members of the Committee:

‘When we began we functioned mainly as members of different parties. As the review proceeded through our travels across the country all the women began to think together and our ultimate recommendations presented only minor differences. **It was one of those rare experiences when all women members came together cutting across party differences.**²⁷ (emphasis added).

The Law Commission had *suo motto* taken up a study on the Dowry Act and examination of dowry deaths. In their very thorough examination they went far beyond the original Act of 1961 and recommended not only how the substantive law on dowry should be changed, but also what changes were necessary in the Evidence Act to facilitate the prosecution against persons who had committed a murder in cold blood.... or driven a woman to taking her own life. While the Commission had little to say about preventive measures it recommended the following insertions in the Penal Code: ‘who ever by persistent acts of cruelty drives a member of his family living with

²⁵ YWCA, 1993 *Women Against Communalism*, Report of the Joint Women's Delegation to Ahmedabad, Surat and Bhopa, New Delhi, YWCA of India.

²⁶ This Committee was also constituted in 1980 to review of the operation of the Dowry Prohibition Act as a result of persistent pressure from women's organisations and included a majority of women Members of Parliament drawn from the different parties.

²⁷ The only two other occasions when similar phenomenon was experienced was during the six months when the National Commission for Women Act, 1990 was being reshaped to provide it with some ‘teeth’ and on the 81st Constitutional Amendment Bill 1996 to reserve one-third seats in the legislative bodies at the state and national level for women. Discussed in the next session.

him to committing suicide shall be punished with imprisonment of either description which may extend to 3 years, and be also liable to fine.²⁸

Many of us have been asking ourselves why in spite of some of the revisions in the criminal law brought about by the agitations, the movement has failed to improve their enforcement or to reduce the incidence of crimes of violence against women. I would agree with Flavia Agnes and Lotika Sarkar that the campaigns did not sustain themselves long enough. Nor were they sufficiently persistent in conscientising or empowering the younger generation, particularly students to persuade them to reject dowry marriages as a whole, in spite of some initial encouraging responses.

In my view this failure reflected an underestimation of changing social norms with rising living standards and economic expectations and inadequate mobilisation and debates over the causes. It has also been argued by some who got involved in providing supportive services to women facing such distress that 'case work' often became an end in itself, forcing some organisations to devote all their time and human resources to it, leaving very little time to sustain the campaigns or organisational work.

On the issue of dowry, the class and social status claims, the expectations of kin-groups and official, business or even political friends have pressured even many participants in the women's movement to deviate from the ideology of rejecting ostentatious celebrations of weddings of their children, even if they avoided payment of actual dowry. The only effective strategy would have been to empower younger women to resist such celebrations.²⁹

The State's failure to accept the Joint Select Committee's recommendations regarding a ceiling on marriage expenditure, or to appoint dowry prohibition officers has indicated lack of seriousness. Some states had made dowry a cognisable offence even before the national amendments in 1984 and 1986, and attempted to limit marriage expenditure - the national laws instead of strengthening the states' efforts, weakened them.³⁰

Proving the rising trend in rapes or dowry deaths was difficult without long-term data, which was not available to the general public. Pressure through Parliament started regular collection and reporting of statistics, which proved beyond doubt that various types of crimes against women were mounting. The next charge we had to face was that because of the agitations and the changes that were brought about in Criminal Law under pressure of the movement, far more women/their families were reporting such cases. If this charge was true, then at least the legal

²⁸ For a detailed examination of this Report of the Law Commission which was not tabled before Parliament for as long as three years see Lotika Sarkar, *op.cit.*

²⁹ This statement is based on my personal and other friends' experiences. I have had to face considerable social censure from friends and kin - for giving in to my children's insistence that 'I should practice what I preach' in celebrating their weddings. In the long run, it proved an empowering experience.

³⁰ See Chart on 'The Dowry (Prohibition) Act, 1961 - Struggle for Amendment' in *Samya Shakti*, 1983, Vol. I (1) July 1983.

reforms had served one purpose. But failure of the reforms was revealed by the long delays in investigations, trials and in the very low rate of conviction.

There is a general tendency among feminist scholars to look at the failures of law in a very simplistic manner, placing the blame either on the 'biased judiciary' or a 'patriarchal state'. Such analysis ignores that like any other functions of government the legal process involves various actors and without adequate information and examination of the legal system as a whole one cannot fix the blame on any one or more set of factors. Flavia Agnes points out flaws or loopholes in definition, classification, procedures,³¹ as well as the penal provisions achieved by the reforms in various laws during the 1980s in response to the women's movement. She also finds a significant shift in the trend of judgements during the campaigns and the post-campaign ones. 'It would come as a surprise to many that the settled legal position regarding consent before the Mathura trial was not as adverse as one would assume. In fact the Mathura judgement had expressed a view which was contradictory to the settled legal position in the Rao Harnarain Singh case where the Supreme Court way back in 1958 had held:

a mere act of helpless resignation in the face of inevitable compulsion, quiescence and non-resistance when volitional faculty is either crowded by fear or vitiated by the duress cannot be deemed to be consent.³² Consent on the part of a women as a defence to an allegation of rape, requires voluntary participation, after having fully exercised the choice between resistance and assent. There is a difference between consent and submission'.³³

Flavia points out that many later judgements during the pre amendment period relied on this position but there was no uniformity. There was a general trend within sections of the judiciary to view rape as 'uncontrolled lust' rather than an act of violence, but 'a new sensitivity regarding the issue of rape within the judiciary can be discerned which can be safely attributed to the newly evolving anti-rape campaign'.³⁴ Flavia proves this by comparing two judgements of Justice Krishna Iyer in 1979 and in early 1980. Though these variations continued, the

³¹ Which I would describe as 'the politics of language' if I was being only theoretical. But twelve years of practical experience inside the 'bureaucracy' compels me to add the more mundane explanation of declining standards of efficiency, including linguistic competence, made still more complicated by the necessity of translating such laws into various official languages in different states. My colleague Nirmala Buch has uncovered several cases of faulty translations of legislation from English to Hindi in Madhya Pradesh. The joke lies in the fact that the original Bills are supposed to be drafted in Hindi, to be placed before the legislature, to be followed by an 'authentic' translation in English. The actual practice is the opposite. In a recent legislation the translated Hindi version contained a clause which did not exist in the original English draft. When this was detected, the bureaucracy had to make the required change in the original English version - since the legislature had enacted the Hindi version.

³² This was also the position supported by the CSWI

³³ Quoted in Flavia Agnes, 1988 'Violence Against Women : Review of Recent Enactment', in Swapna Mukhopadhyaya (ed.) *In the Name of Justice*, Manohar Publishers, New Delhi, p. 86-87.

³⁴ Ibid, p. 87

impact of the reforms in the rape law on certain sections of the judiciary is brought out by the land mark judgement of the Supreme Court in 1983 : ‘that in the Indian setting, **refusal to act on the testimony of the victims of sexual assault in the absence of corroboration is adding insult to injury**’.³⁵

Apart from the conservative notions about women’s sexuality, chastity, virginity etc. amongst most sections of the judiciary (with a few exceptions), Flavia rightly points to the harsher penal provisions introduced in the amendments as a cause of the negative reaction of the judiciary, because these provisions went against broader trends in legal reform, particularly when the offender was young in age.³⁶

But can we only blame the ‘conservative notions’ of the judiciary? To carry Flavia’s arguments further, should we not look at other regressionary trends in social behaviour demonstrated both by the general increase in the crime rate, (not just crimes against women) and the declining quality of law enforcement with criminalisation of politics? I am forced to admit that the movement has failed to contextualise the increasing rate of violence against women, including domestic violence, child abuse, child prostitution etc. as a part of socio-political pathology and the failure of social controls. Flavia is right in blaming the State machinery - judicial and executive - but fails to mention the crime-politics-governance nexus.

Population Policy and the Women’s Movement : Contradictions Facing Both State and Feminist Ideology

The third major area of violence against women that the movement uncovered was the sharp increase in use of sex determination and sex selection tests with the use of new reproductive technology, which were followed by abortion of female foetuses. Very soon after this *India Today* brought out the story of female infanticide among the Perumalai Kallar community in Usilampatti Taluk in Tamil Nadu. In both these issues the movement ran into resistance from (a) the very favoured and high priority policy of population control of the government; and (b) the social impact of thirty years of the population debate within the better off section of the Indian population, which included also the various professional classes like doctors, and the medical education establishments, development advocates,³⁷ and even some sections of women’s organisations which had moved from the original demand for birth control services put forward by women in the 1920s and 1930s as a women’s right - to a wholehearted support for the government’s policy for population control.

The Committee on the Status of Women in India had to confront two critical questions. Examination of health allocations indicated clearly that from the Third Plan onwards the proportion of resources allocated for family planning was increasing at a much faster rate than all the other sectors of public health, including maternal and child health. Mortality statistics showed widening gender gap between males and females across all age groups. The Health Task Force

³⁵ Ibid, p. 88,

³⁶ Ibid. p 88-93

³⁷ Vina Mazumdar, 1994 : ‘Amniocentesis and Sex Selection’, Occasional Paper, New Delhi, CWDS.

appointed by the CSWI ordered a review of available studies on health, with a focus on women and children. This study,³⁸ increased the Committee's distress and outrage which is reflected in the Committee's report.³⁹

The second critical issue was the Medical Termination of Pregnancy Act, 1972 legalising abortions. The Committee had to face some very serious criticism from a law expert⁴⁰ and a senior Professor of gynaecology, Prof. Krishna Menon. The former thought the law contained both unethical and discriminatory features. The latter had pleaded with the Government to decriminalise abortion, restoring the right to the medical profession to perform such abortions when they were necessary to save the life of the mother, arguing that criminalisation had only promoted increase of abortions by unqualified or unethical persons under unhygienic conditions leading to high loss of life of women. 'A few cases that come to us after such operations are already *in extremis*, when it is too late to save them'. However, he had totally opposed the government's decision to include 'failure of contraception' as one of the conditions under which abortion could be performed by recognised medical personnel/ establishments. 'As it is, the commercialisation of medicine is sadly crippling medical ethics. Introducing this provision to the policy, and **medical education will totally erode all ethical values from coming generations of doctors**'.⁴¹(emphasis added)

The Committee concluded that while legalisation of abortion was necessary to save women's lives, it should not be used as an instrument of population control and the warnings from ethical medical personnel and teachers should not be ignored.

The debate however was not pursued because many feminists viewed abortion as a woman's right to voluntary maternity. Others who had tried to assist unmarried mothers after their rejection (or worse) by their families, also supported this view from humane convictions. The CSWI supported the strength of their argument that a large section of criminal abortions had belonged to this category.

In the period after the Emergency the practice of forced sterilization of men (believed to be a major cause of Indira Gandhi's losing the election of 1977) was abandoned, but the Population Policy adopted during the Emergency remained, increasing pressure on the sterilization of women. Within one year after the lifting of the Emergency, female sterilization rose to over 90% of the total.

By the early 1980s new reproductive technologies like amniocentesis had appeared on the scene. A few years earlier a doctor at the All India Institute of Medical Sciences involved in genetic research into sex-specific diseases had obtained access to this technology, and was offering clinical services to certain patients. To her horror she discovered that in many of the cases the diagnosis that the foetus

38 Undertaken by Dr. S.N. Kurlkarni under the guidance of Prof. Ashish Bose.

39 Government of India, 1975, op.cit, Chapter 8, Section on Health.

40 The late Prof. Raghunath Kelkar

41 This prophecy has been confirmed as true by many medical educators in the later years.; See also Vina Mazumdar, op.cit. Also see S. Sudha and S. Irudaya Rajan, 1998 : 'Intensifying Masculinity of Sex Ratios in India : New Evidence 1981-1991', Working Paper No. 288, Thiruvananthapuram, Centre for Development Studies.

was a female (even without any evidence of genetic disorder) was being followed by abortions. She refused to be a party to this development. The Indian Council of Medical Research directed the AIIMS to stop offering clinical services, leaving the tests only for research purposes.

In 1982 Prof. Lotika Sarkar picked up a hand bill being distributed in railway compartments by a clinic in Amritsar, offering amniocentesis tests to expectant parents (no mention of genetic disorders). The arguments offered in the hand bill in support of the test included the following words: 'the birth of a daughter in these days is a threat to the family economy, **and to the nation**'. A public meeting organised by national women's organisations (and the CWDS) in Delhi condemned the use of these tests for making money⁴² and recommended that they be only permitted at teaching and research institutions for the limited purpose of preventing genetic diseases. The resolutions were carried to the Health Ministry by the Joint Secretary in-charge of the Women's Bureau who was present at the meeting, and brought forth loud condemnations of the practice from the Union Health Minister.

The agitation thereafter shifted to Bombay where studies brought out the unsavoury fact that 98% of abortions following sex-determination tests were of females. About 41% gynaecologists performing the abortions felt that the pregnant women were under pressures from their families. Joint campaigns mounted by some ethically committed doctors, scientists and women's groups finally forced the Maharashtra government to legislate a ban on such tests - the net result of which was to push them underground. Similar legislations followed in Gujarat and Goa and finally at the national level. But their impact has been very similar to the criminal law amendments and the anti-dowry legislations.

Writing a paper on the theme of amniocentesis and sex selection for an international seminar,⁴³ I found it impossible to do any strong analysis on the basis of the inadequate material that I was able to obtain. Purely for the sake of comparison I obtained some field study reports on the emergence of female infanticide in Tamil Nadu - which to the best of my knowledge had no history or tradition of female infanticide before unlike many of the northern states. What came out was -

- (a) the recent emergence of this phenomenon mainly in the prosperous part of the Usilampatti Taluk while in the undeveloped arid parts women still outnumbered man;
- (b) ethnographic studies on the particular community - Perumalai Kallars - done in the '1950s and 1960s⁴⁴ had still noted them as women-dominated communities;

⁴² The day before the meeting the *Statesman* carried a full page investigative and vivid article by Ritambra Shastri of PTI describing the crude display of female foetuses in the clinic concerned since it was performing abortions straight away after the test. She even found out from some patients that the test was not fool-proof since the aborted foetus turned out to be a male.

⁴³ At the World Institute of Development Economic Research, at (UNU) Helsinki - the Seminar theme was 'Women, Equality and New Reproductive Technology'.

⁴⁴ By Louis Dumont and Pauline Kolenda

- (c) that the phenomenon had appeared that the practice enjoyed substantial social sanction from educated professionals and the political elites who cited rising dowry as the cause, while the women interviewed said 'if the *sarkar* thinks abortion is OK what is wrong with what we have done? We do not want to risk our health through abortions so we wait till the babies are born'. They also admitted that many of them had done this under compulsion from the family.⁴⁵

During the last two decades both sex-determination and sex-selection tests and female infanticide has spread to many other regions, indicating a marked decline of the juvenile sex-ratio stimulating the demand for more studies and intervention strategies.⁴⁶ But inspite of the shocking disclosures both government and public reactions have been extremely muted.

The efforts of the movement to implement the laws have been weak and ineffective. They movement has however agitated against the entry of hazardous contraceptives like Norplant, Depo Provera, Quinacrine etc., and has discovered that established rules and procedures have been violated even by government bodies to become very liberal in permitting marketing of such dangerous drugs under pressure from the government. The new policy of liberalisation of imports has also accelerated the spread of NRIs for sex-determination and mobile vans - providing these tests followed by abortion - are reported to be carrying the practice even into rural areas. The movement's protests have forced state and national governments into announcing various schemes of financial incentives to persuade families to save their daughters. The schemes suffer from the basic flaw that these practices are primarily being escalated by the poor - a thesis being challenged by many scholars.⁴⁷

Women's groups have also been in touch with their counterparts outside the country to identify the role played by manufacturers of these products (mostly multi-nationals) and donor agencies from the developed countries who have aided and abeted the government in its relentless pursuit of population control.

A section of population experts have also argued against the use of coercive methods for population control or using women's ignorance to promote use of hazardous contraceptives. It is against this background that the movement went into a confrontation with the Government of India to prevent a new population policy and some proposed Constitutional amendments that the movement considered anti-democratic, anti-women and anti-poor.

⁴⁵ Vina Mazumdar, op.cit

⁴⁶ Agnihotri, Satish, 1996 : 'Juvenile Sex Ratios in India : A Disaggregated Analysis', *Economic and Political Weekly*, 28th December, 3369-3382; S. Sudha and S. Irudaya Rajan, 1998 : 'Intensifying Masculinity of Sex Ratios in India : New Evidence 1981-1991', Working Paper No. 288, Thiruvananthapuram, Centre for Development Studies.

⁴⁷ N. Krishnaji, 1992: 'Pauperising Agriculture - Studies in Agrarian Change and Demographic Structure' New Delhi, , Oxford University Press.

The 79th Constitutional Amendment Bill, 1992 proposes to deprive persons who do not voluntarily accept the two child family norm, of their democratic right to stand for elective offices. The amendment was drafted on the basis of a recommendation of a Sub-committee of the National Development Council in 1991. The Committee was headed by Bhairon Singh Shekhawat then (and now) the Chief Minister of Rajasthan - who promptly proceeded to introduce the principle in the Rajasthan Panchayati Raj Amendment Act without waiting for the passage of the amendment at the national level. The Government of Haryana followed suit, while the government of India - without informing the nation of the drafted Bill, appointed an Expert (Swaminathan) Committee to draft a national population policy towards the end of 1993.

Some information regarding the proposed Constitutional change reached some women's organisations and activists through allies within the government - beginning a direct approach to influence the Expert Group, and joint meetings to offer concrete suggestions for a more positive population policy which would promote more democratic, cooperative and egalitarian social development, abandoning the negative and coercive.

The Expert Committee's philosophical attempt to propagate a 'pro-poor, pro-women, and pro-nature' policy however foundered in the face of the determination of the government.⁴⁸ Though the Swaminathan Committee did not directly support the Amendment already drafted - its reference to the Haryana and Rajasthan Acts as 'demonstrations of political will' has enabled the Government of India to claim that its new draft policy, including the amendment (and other proposed legislation) is based on the Expert Committee's Report, though the latter's entire analysis of the problem and related issues advocating a social development focused, rather than mere population control focused approach is missing from the new draft. In November 1996, a Cabinet Note enclosing the new draft policy suggested that the 79th Constitutional Amendment Bill was now ready for passage through Parliament.

Fortunately, a belated reference to the National Commission for Women for its comments - as required under the National Commission for Women Act, 1990 - brought forth a straight negative after consulting women's organisations and population experts. The Bill has not so far been passed but 'population control' figures in the present government's national agenda, so it may still be revived.

Another proposed Constitutional Amendment being resisted is the 83rd, which, in the name of making elementary education a fundamental right, proposes to reduce the state's responsibilities to the population between 6 and 14 thus absolving itself of all responsibilities for the children upto the age of 5. Interestingly enough, the draft population policy statement of 1996 had one positive feature - to initiate a national programme of child care services for all children in this age group which had been the constant demand of the women's movement since late 70s.

⁴⁸ For a collection of documents demonstrating this controversy, see CWDS, 1997, *National Population Policy : Perspectives from the Women's Movement*. New Delhi, CWDS.

Another objectionable legislation proposed in the new population policy, which is also being resisted by the women's movement and the National Commission for Women - is a law to improve enforcement of the Child Marriage Restraint Act⁴⁹ by disqualifying the victims of such marriage from all public employment.

This paper cannot trace the entire history of the women, violence and law debate in India in its entirety. I am restricting it to the three issues discussed so far, because between them they cover the major controversies within the movement and between the movement and the State and the general public. Violence is an issue that has always given rise to moral controversies throughout human civilisation. Neither legal ideology, nor political ideology, not even religious ideology have succeeded in eliminating the cultural roots of the cry for retributive justice. On the other hand, few can deny the practical wisdom of the Gandhian principle : violence breeds violence. The pretension of the state that capital or other forms of heavy punishment act as deterrents to crime is challenged both by humane theories of legal growth and by the rising graph of violence all over the world. The futility of nuclear and other weapons of mass destruction, or expansion and technological development of relatively conventional weapons as deterrents or guarantees against insecurity of the people has also been proved repeatedly over this century.

Women's movement - in India or elsewhere - certainly want peace and security, but feminist ideology, or the distinction that it seeks to make between 'body politics' or other types of 'politics' has not resolved the basic conflict over the nature of justice - its ideological/moral content, and practical feasibility.

⁴⁹ Originally enacted in 1929 on demand by social reformers and women's organisation, and amended successively after independence more with the objective of population control than making enforcement more rigorous.

III

POLITICAL RESERVATION: THE POLITICS OF RESPONSIBILITY, REPRESENTATION AND GOVERNANCE

Since this has become one of the most hotly debated issues - both within and outside the movement - since the 81st Constitutional Amendment Bill 1996, seeking to reserve one- third seats for women (including within the two already reserved categories - for Scheduled Castes and Scheduled Tribes) was introduced in Parliament. I propose to make this section very short: (a) to put the historical record straight ; and (b) to suggest a few close relations between the two political crises - of democracy and governance that faces India today.

It is extraordinary that none of the arguments that have been brought up against the 81st Amendment Bill came up during the passage of the far more historic 73rd and 74th Amendments in 1993, conferring Constitutional status on local self government bodies as integral parts of India's democratic governance structure, and **mandating one-third reservation for women in all these bodies, with inbuilt quotas for Scheduled Castes and Scheduled Tribes women.** At least part of the reason for this lack of opposition to this first mandatory reservation can be attributed to the political sagacity or ideology of the women's movement. Many of us feel that the future of India's democracy and governance rest on the long-term implications and success of these two amendments, perhaps even more than that of the 81st.

The question of reservation for women had surfaced even before Independence because women from the leisure, elite classes of that period - who wanted to play some role in public life realised the hurdles on their way. The women leaders who rejected it on the other hand, **were those who were already leaders in their own right within the nationalist movement and viewed the demand for reservation as an admission of weakness/inferiority.**

The same opposition was visible during the review of the Committee on the Status of Women in India nearly quarter of a century later. While social scientists who undertook studies on the Committee's request came back with a uniform finding that while women's participation as voters had been increasing at a faster rate than men, their representation as candidates - successful or unsuccessful - registered infact an opposite trend⁵⁰.

The trend has continued till date. In Lok Sabha elections between 1952 and 1996 the percentage of women among contestants remained virtually stagnant at 3.2%. In fact with the exception of 1957 (the second general election), where their percentage was 4.4, the stagnation was very marked. **In the success ratio on the**

FOOTNOTES

⁵⁰ Government of India, 1975 : *Towards Equality*, Report of Committee on the Status of Women in India, New Delhi, Ministry of Education and Social Welfare, Chapter 7.

other hand there was a definitive decline from 43.1% in 1952 and 50% in 1962 to the lowest ever 7.9% in 1996. In state assemblies there were slight variations of the gross period average of representation, ranging from 1.8 in 1952 to the maximum of 6.3 in 1957, and a stagnation around 4.5% in the rest of the elections. In the state averages covering the period 1952 to 1997 the variation is negligible, again showing a stagnation figure around 4%.⁵¹

Results upto 1971 led Iqbal Narain (one of the social scientists who assisted the Committee) to conclude that Indian women had achieved the symbols of power but not the reality.⁵² Comparing these averages with the reservation of 5% for women provided under the Government of India Act of 1935 Upendra Baxi argued that **‘The existing limitations on the role being played by the minority of women legislators may increase if their number declines further of the continuation with the already recognised trend in this direction’.** Baxi also argued that a transition provision of reservation to ‘break through’ the existing structures of inequality would not be retrogression ‘from the doctrine of equality of sexes and the principles of democratic representation’ but would serve as a long term objectives of the equality and democracy better than ‘the present system where inequalities get intensified’.⁵³

Iqbal Narain advocated reservation as an integral aspect of the necessity of broadening the political elite structure. ‘At a later stage of development, changes in the socio economic order may buttress changes in the political status of women but it has to be the other way round in present day India’.⁵⁴

Pleading for **a qualitative change in the very character of the Indian legislature and the process of representation, V.M. Sirsikar argued that reservation for women would not introduce further divisive tendencies because ‘women are not marginal to society as a minority group might be’.**⁵⁵ In his view it would help to increase women’s participation and motivate them to shoulder their political responsibilities.

Advising the Committee on the state of rural women’s representation in Panchayati Raj bodies, Lalit Sen described the provision for nominating one or two women (if no one was returned by election) as the worst tokenism. He warned the Committee that unlike some sections of the urban population, rural India had remained ‘virtually unaware’ that women or children had any rights under the Indian Constitution. **It was thus not a question of rejection but of total lack of information for the majority, men and women.** He also argued strongly for a

⁵¹ ‘Fact file - 1952-1997’, in *Seminar*, 457, September 1997, pp. 50-52.

⁵² For a collection of these studies, see Vina Mazumdar (ed.) 1979 : *Symbols of Power*, - Studies on Political Status of Women in India, New Delhi, Allied Publishers.

⁵³ Upendra Baxi - ‘Provisions relating to Women in the Indian Constitution : An Analytical Examination’ undertaken for the CSWI.

⁵⁴ GOI, op.cit.

⁵⁵ Sirsikar, V.M., ‘Political Awareness and Participation of Women in India’, a three State Survey commissioned for the CSWI; *Towards Equality* op.cit, Vina Mazumdar op.cit, and *Seminar* op.cit.

larger representation of women in these bodies if the Committee wanted to improve the material, social or political conditions of rural women.⁵⁶

Surprisingly the CSWI, while recommending unanimously the establishment of statutory women panchayats with an integral connection to other Panchayati Raj institutions, failed to agree on the principle of reservation in other elective bodies. The majority decided to stand by the position taken by their seniors in the freedom movement and ignored the pleas - not only of four stalwart social scientists, (all renowned for their commitment to India's democracy and knowledge of the Constitution) but also of junior cadres of women political activists who had complained bitterly to the CSWI about discriminatory treatment by the parties in offering nominations. Only three of us - Lotika Sarkar, Neera Dogra and myself - decided to dissent on this, because we felt the Committee was being unwise in ignoring the need for institutionalised measures to eliminate or at least weaken institutionalised inequalities which 25 years of universal adult franchise had failed to dislodge. **We also saw the failure on the representational front as part and parcel of the secular trends of decline and marginalisation that we had identified on the economic, educational, health and other fronts.**

I must record here that for Lotika Sarkar and myself, taking up this stand represented an enormous ideological and conceptual shift which was to develop into a search for a new identity for ourselves in the maelstrom of the politics of nation building. As 'daughters of independence' we had been critics of special representation or class representation as a legacy of the colonial period which sought to institutionalise 'backwardness' of certain sections.⁵⁷

25 years later we discovered considerable resistance among women of our and an older generation to be equated with Scheduled Castes and Tribes. As recorded in the first section of the paper, the Indian women's movement has done a complete volte-face on this position. We have found our understanding of nation building changing radically as we sought to come closer to the life experiences, the unacknowledged wisdom and knowledge, the priorities and perspectives of poor peasant and working women in the informal sector across the country and the sub-continent, forcing us to raise questions about the meaning of development, of freedom, traditions, modernisation, social progress, and the dynamics of economic, cultural and demographic changes that we had never asked before.

The Committee's recommendations on panchayat and municipalities went into cold storage for over a decade. With an increase in grassroot organisations however, the new groups of poor women demonstrated far greater dynamism and challenge - economically and politically. The issue of reservation was periodically raised by political activists but not at their party levels. However, the women's movement grew from the expansion and growth of activism among women's fronts of political parties (mostly among the left and socialist parties).

⁵⁶ Lalit Sen was then Professor in the National Institute of Community Development and an expert in rural sociology.

⁵⁷ In 1960 I had taken this position in my D.Phil. thesis on the Morley-Minto reforms submitted to the University of Oxford. Pressure of multiple responsibilities had prevented its publication in spite of a request from the Clarendon Press at Oxford. When writing our dissent note I told Lotikadi that my first piece of major research will have to remain unpublished thereafter.

In 1985 the intention of the new government of Rajiv Gandhi to give greater priority to women's issues⁵⁸ led to a consultation between the Secretary, Social Welfare (which had developed a women's division as a follow up action to the CSWI's Report and the International Women's Decade) and some of the authors of *Towards Equality*. As a result he agreed to (a) reopen the panchayat issue; (b) intervene in the discussions for a new education policy; and (c) try to persuade the Planning Commission to reconsider the special component approach for women in all sectoral development.⁵⁹ While (b) and (c) produced some results,⁶⁰ (a) got absorbed within Rajiv Gandhi's plan for strengthening district planning by making Panchayati Raj institutions a part of the Constitution. Built into his 64th Constitutional Amendment Bill, 1989 was the provision for a 30% reservation for women in these bodies.

While the general political debate was focused on certain provisions in the Bill viewed as attempts to increase the powers of the national government at the cost of the states, there was general support to the principle of decentralisation of government and planning. I do not remember a single objection being raised at any level to the provision for reservation for women. At a workshop called by the CWDS to focus some discussion on this issues, leaders of women's organisations and social scientists strongly supported the idea.⁶¹

The Government of India had also constituted a Core Group to prepare a National Perspective Plan for Women which came out with its draft recommendations in 1988. The Chapter on Political Participation acknowledged the problem of under-representation and recommended 30% reservation for women **in** all elective bodies - from panchayats to Parliament. There was however a proviso that in the initial years this quota may have to be filled by nomination/co-option.

National women's organisations⁶² called for a national debate to discuss the NPP. When this was disregarded by the Government, they organised one on a limited scale themselves. **This particular recommendation regarding nomination/co-option was rejected outright as 'subversion of the Constitution'. Instead, they demanded 30% reservation for women in panchayats and municipalities 'with due representation for women belonging to Dalit and Tribal communi-**

⁵⁸ *President's Address* to Parliament, 1985

⁵⁹ This was recommended by the working group on Employment of Women (1977-78) but rejected by the two successive Planning Commissions.

⁶⁰ See National Policy on Education, 1986, Section titled Education for Women's Equality which directed the national educational system to play a positive interventionist role in the empowerment of women and provided Parliamentary support for the expansion of women's studies. The special component formula made its first appearance in the anti-poverty programmes of rural development with a minimum 30% quota for women within all such programmes.

⁶¹ CWDS, 1989, *Partners in Grassroot Democracy*, New Delhi, CWDS.

⁶² All India Democratic Women's Association (AIDWA), All India Women's Conference, (AIWC), Centre for Women's Development Studies (CWDS), Joint Women's Programme (JWP), Mahila Dakshata Samiti (MDS), National Federation of Indian Women (NFIW) and YWCA of India.

ties' but to be filled only by election. The rationale for this complex and somewhat contradictory position (since the debate did not recommend reservation in Parliament and state assemblies) was - 'the need for a new kind of leadership from below'.⁶³

The final version of the Government's NPP recommended reservation only in panchayats and municipalities to be filled by election. This version was then incorporated in the 64th Constitutional Bill, 1989.

The late 1980s and the early 1990s witnessed three changes of government at the national level, with two general elections in 1989 and 1991. The Panchayati Raj Amendment Bill went through successive versions, and finally emerged as the 73rd and 74th (Constitutional) Amendments in 1992, enacted unanimously by Parliament just two weeks after the demolition of the Babri Masjid. They were ratified by the middle of April.

The responses of women to these two measures in the elections that followed in several states, and the political dynamism demonstrated by women voters in the Assembly elections between 1993 and 1996 persuaded women's organisations into putting forward a joint demand for one-third reservation in state assemblies and Parliament before all parties prior to the general elections of 1996. The demand was accepted and featured in various manifestoes, as well as the Common Minimum Programme drafted to establish the coalition government of the United Front which introduced the 81st (Constitutional) Amendment.

Despite the unanimity among a section of leadership of all parties the Bill did not pass - though it was recommended by a Joint Select Committee. It has now appeared again on the National Agenda of the present coalition government led by the Bharatiya Janata Party which promises to redraft and bring in a new version of the Bill very shortly. Considering the situation in the present Parliament its fate appears uncertain.

Purely at a personal level, I have admired and exalted in the position taken by the national women's organisations in giving priority to the emergence of a 'new leadership from below' in 1988. It demonstrated a strong commitment to **strengthening India's democracy**, not only through the politics of representation but through an attempt to bring the structures of governance within the reach of both women and men at the grassroots - with a relatively stronger presence of women. In time, this association with the responsibilities of governance would strengthen their capacity and power through collective articulation⁶⁴.

In the discussion with the Select Committee of Parliament, the delegation of the national women's organisation countered all charges of elitism for not recommending reservations for women of 'other backward classes' by pointing out

63 CWDS, 1988: National Perspective Plan for Women : Perspectives from Women's Movement, mimeo, New Delhi, CWDS.

64 D. Bandyopadhyay, 1993 : 'Powerlessness and Fertility', Paper presented at a Workshop on Population and Governance on the request of the International Independent Commission on Population and Governance, Bellagio, September 1993 (unpublished, but cited in the Commission's Report - *Caring for the Future*; OUP, 1996.

that (a) they had requested the quota within the sections which already enjoyed reservation within the Constitution; and (b) they saw the need for a Constitutional amendment **to force all political parties to undertake much needed reforms within their own structures, since little had been achieved in more than two decades since the CSWI's recommendations to the political parties.**

While the delegation emphasised the crisis facing India's democracy with increasing political instability and growth of irresponsibility, fragmentation and criminalisation among the political class, I would like to emphasise two other crises that face the Indian political system.

The increasing culture of violence, political irresponsibility and the discovery that 'prosperity' **is producing increasing effect on the masculinity of the juvenile sex ratio**⁶⁵ indicates a social malaise, as well as a crisis in governance. It is high time for the women's movement to demonstrate their political responsibility, not merely through the politics of protests, but also through direct intervention in the tasks of governance. And this is not possible unless a much larger number of women are present in all these bodies to make their collective voice effective, to bring Mahatma Gandhi's dream of 'feminising politics' through making 'women affect the political deliberations of the nation'⁶⁶ a little closer to reality. This calls for a new politics of responsibility.

⁶⁵ Agnihotri, Satish, 1996 : 'Juvenile Sex Ratios in India : A Disaggregated Analysis', *Economic and Political Weekly*, 28th December. (His thesis is being published by Sage Publishers shortly); Also S. Sudha and S. Irudaya Rajan, 1998 : 'Intensifying Masculinity of Sex Ratios : New Evidence 1981-1991', Working Paper No. 288, Thiruvananthapuram, CDS.

⁶⁶ Mazumdar, Vina, 1988 : National Specialised Agencies and Women's Equality: Khadi and Village Industries Commission, New Delhi, CWDS.

CONCLUSION

In an extremely scholarly and informative paper on rights, law and feminist politics, Nivedita Menon identifies several contradictions, constraints or inconsistencies within feminist approaches to law and the State from a stand point of women's rights:

'law functions by assuming certainty and exactitude, through the creation of uniform categories out of a multiplicity of identity and meaning.... Appeals to the law are made on the assumption that rights are self evident and universally applicable. However, an examination of rights claims invariably reveals them to assume a shared universe. ... In other words while the law demands exactitude and universally applicable principles, rights, which are used to enter the arena of law are constituted differently by difference discourses.... A social movement operating in the realm of law is constrained to use the language of rights because legal discourse is animated by the weighing the competing rights.... when a social movement makes claims based on rights ... these claims are predicated on the assumption that these rights should be protected by law, the language of rights that tends to privilege, the sphere of the state and its institutions.'⁶⁷

Arguing that 'feminists seeking social justice through the law have come up against the limits set by the criterion that law be uniform and consistent,' whereas 'women's experience' are 'different' and diverse, and 'rights' exist 'in a realm of complexity, ambiguity, and undecidability', she finds feminist theory and practice caught in a dilemma, of the exactitude demanded by a legal discourse and the ethical impulse that propels a liberatory movement.

She demonstrates this by the Canadian Charter of Rights and Freedom of 1982. Demanded by feminists seeking rape law reform - 'the proposals became part of a package of greater regulation over sexual behaviour'. Translating the demand for substantive equality for women into legal rights divorces feminism from its broader political demands - 'instead of directly addressing the question of how best to promote women's sexual autonomy under social relations which result in women's sexual subordination'. Feminists invoking the Canadian Charter must couch their arguments in terms of rhetoric of equality rights and 'interpret equality as formal equality rather than contextualising it within a historical frame work in current inequality'.

The public/private distinction according to Menon is a feminist dilemma, contested by feminist scholarship from both liberal and Marxist tradition. Liberal feminists

FOOTNOTE

⁶⁷ Nivedita Menon, 1998: 'Rights, Law and Feminist Politics: Rethinking our Practice : in Swapna Mukhopadhyay (ed.), *In the Name of Justice : Women and Law in Society*, Delhi, Manohar.

have argued that this dichotomy between non-domestic and the domestic has enabled the family to be excluded from the values of justice and equality which have animated liberal thought since its beginning.⁶⁸

The socialist critique is focused on the model of political economy based on production for the capitalist market which ignores the private sphere of reproduction where women are responsible for reproducing both humans and labour power⁶⁹ Citing many other scholars, Menon shows the limitations of the Marxist theory, in that it assumes class as the primary basis of exploitation and excludes gender based exploitation. Unfortunately Menon ignores the whole body of historical writing - **both in India and in the West that questions the validity of the public-private dichotomy except as a product of the industrial revolution⁷⁰ or in the Indian context as a product of increased social stratification, accelerated during the colonial regime by the incorporation of the Victorian family model among the upper castes/echelons of Indian society who were beneficiaries of the modern education system.**⁷¹

Basically Menon's arguments rest on the contradiction between the emancipatory aims of a social movement against the fixedness of law, the universality and uniformity insisted in legal abstraction with the multiple variations in women's experience across space and time. The 'problematic' of women's rights as between individual versus social or group rights, its feminist and socialist perspectives and the complex impact of the right to privacy (used by feminists in the West to demand legalisation of abortion) and its use by the Indian State as an instrument of population control have been discussed in earlier sections of this paper.

The only alternative approach⁷² cited by Menon in her paper is that of 'substantive equality' which emphasises not equal treatment under the law but on the **impact of the law, in an attempt to make the law more sensitive to a more complex notion of equality which takes into account the comparative disadvantages of persons under existing unequal conditions.** Its proponents hold that in some contexts the substantive model will require a sameness approach, in others a corrective approach to take into account difference as well as disadvantages. Both conceptually as well as in political practice, however, this approach is illustrative of the problematic nature of the discourse of legal rights. It assumes to begin with, the separateness of the judiciary and legal system from the institutions of the State and the social and cultural practices which constitute present conditions of

⁶⁸ Ibid.p. 31

⁶⁹ Juliet Mitchell, 1971 : *Women's Estate*, London, Penguin.

⁷⁰ Gunnar and Alva Myrdal, 1931; Illich, Ivan, 1981 : *Shadow Work*; Boston and London, Mario Boyars Inc.; Rowbotham Sheila, 1974 : *Hidden from the History*, London, Pluto Press.

⁷¹ *Towards Equality* cites A.S. Altekar, M.N. Srinivas and others; See also Vina Mazumdar, 1989 'Education and Gender Equality: An Asian Overview, CWDS, Occasional Paper No. 15, New Delhi, CWDS.

⁷² Ratna Kapur and Brenda Crossman, 1993 : 'On Women, Equality and the Constitution : Through the Look Glass of Feminism', in *National Law School, Journal*, Vol. I.

inequality.... If the morality underlying the notion of substantive equality were so self evident and unthreatening to the dominant social order, we would not need the law to bring about social justice’.

While I remain indebted to Menon for her very educative and scholarly exposition I have difficulties in accepting her conclusion that the practice of emancipatory politics or democratic movements towards elimination of oppression cannot be (or should not?) attained through the path of law,

To move away from legal and State-centred conceptions of political practice and to recognise political practice as the perpetual attempt to eliminate indeterminacy rather than the achievement of this elimination is to inscribe the democratic project with a deep anxiety. But it might be that this anxiety has more potential to be just than the politics of certainty.⁷³

While Flavia brings out some aspects of the complexity of the legal system, Menon reduces both law and justice to abstractions. Her analysis ends in what I can only describe as a *Neti, Neti* conclusion which does not offer any real suggestions to the women’s movement. She has also completely missed the fact that the majority of women especially, **those who have been so far marginalised and frequently ‘excluded’ by the law in India are very strong in demanding the rule of law, but within their own reach.**

The concepts of rights and justice, in my opinion, are more than abstractions. Whether I look at the history of these concepts in the Indian context, or in the Western context I come up with the conclusion **that they have provided ideological basis for much political dynamism.** It is a pity that Indian scholars engaged in this discourse make so little use of the **evolutionary nature of these concepts within Indian culture and history and the manner in which they were called on during the anti-imperialist struggle by a whole range of nationalist leaders and thinkers.** If legal abstractions are always at odds with women’s experience one can also argue that feminist abstractions (like patriarchy, or male dominance/bias permeating the entire social, cultural and political order) **prevent identification of eroding points of the legal system.**

I am surprised that neither Menon nor Flavia have even referred to the role the legal education has played in shaping the culture and biases of the entire legal profession, or **the absence of legal education or information amongst the overwhelming majority of citizens, especially women and their families play in perpetuating the failures of law.** The adversarial procedure built into the system promotes only the culture of competition, and not the pursuit of justice.

The muted criticism of the failures of the Indian women’s movement at the conceptual and practice level does not mention the work done by activists (including Flavia herself) in carrying legal literacy, including procedural literacy, to many women of different classes, who have now expanded the base of the women’s movement, or the experiments mounted by legal reformers including those from within the women’s movement - in improving of the outreach of justice delivery system through Lok Adalats, Mahila Adalats etc. Flavia’s paper⁷⁴ that I have used

⁷³ Menon, op.cit, p. 38

⁷⁴ See Section II

here does not mention her strong support for rescuing legal education from the clutches of legal professionals only, and restoring it to form a part of general education - which used to be the practice both in the West and the East in earlier times, a suggestion which some of us in the older generation have been making for a long time and which found some expression in Nandita Haksar's and Vasudha Dhagamwar's efforts to demystify laws for women.

During the last few years my attempts to plead for learning some lessons from the traditional justice delivery mechanisms, - to develop more accessible delivery of justice and seek to revive social sanctions which historically demonstrated some evidence of being less hostile to women's perspectives (especially among the working population) has found very few supporters. I acknowledge with pride that Flavia is one of them. My anthropologist colleague Malavika Karlekar is another whose field study of victims of domestic violence found many of them searching for not necessarily retributive justice, or the end of a familial relationship, but a search for 'some support and intervention which perhaps earlier they got from kinship networks and customary local authorities'.⁷⁵ In my experience organised groups of rural women, once they acquire information on their existing legal rights **immediately say that they feel empowered. In the next step they proceed to exercise their empowering knowledge to support other women in their area who are victims of domestic oppression.** I have been arguing that the **decentralisation of governance with the strong presence of women in the panchayats has created an opportunity for promoting the improvement of the justice delivery system - which will not exclude what Baxi calls 'legal growth'.**

To conclude, I think much more examination and analysis of the constructive and reformist thrusts of the women's movement in dealing with the State, society and law are necessary, than I am capable of. Secondly, the whole issue of rising trends of violence as a phenomenon at the global and national level needs much more systemic analysis, to contextualise it within the context of globalisation. If absolutist moral positions are made difficult by contemporary intellectual traditions, the feminist movement will lose both its politics as well as its emancipatory ideology. It would be a better strategy to regard law and legal systems also as products of history and evolution, and use the lense of social development to examine both statutory and customary law and legal practices, instead of either damning or romanticising one or the other. The real feminist dilemma, in my opinion, is balancing the politics of protests with the politics of construction and reform and keeping feminist demands per se narrow and constant if the women's movement is to survive and gain further strength within the rising tide of fundamentalism and reactionary politics.

⁷⁵ Malavika Karlekar, at a UNICEF Workshop on 'Violence Against Women and Grils' in Delhi, 1977.